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February 3, 2017

**Via Electronic Filing**

Rosemary Chiavetta, Secretary  
PA Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Re: Alan Haulman c/o AJH Pizza, Inc. v. PPL Electric Utilities Corporation and Blue Pilot Energy, LLC, Docket No. C-2014-2415273

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Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Reply Brief of Blue Pilot Energy, LLC with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,



Karen O. Moury

KOM/lww  
Enclosure

cc: Hon. Dennis Buckley w/enc.  
Cert. of Service w/enc.

**CERTIFICATE OF SERVICE**

I hereby certify that this day I served a copy of Blue Pilot Energy's Reply Brief upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

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Dated: February 3, 2017



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Karen O. Moury, Esq.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>ALAN HAULMAN C/O AJH PIZZA, INC.</b>	:	
	:	
<b>v.</b>	:	<b>Docket No. C-2014-2415273</b>
	:	
<b>BLUE PILOT ENERGY, LLC</b>	:	

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**REPLY BRIEF OF BLUE PILOT ENERGY, LLC**

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Dated: February 3, 2017

Attorney for Blue Pilot Energy, LLC

## **I. STATEMENT OF THE CASE**

On April 2, 2014, Alan Haulman c/o AJH Pizza, Inc. (“Complainant” or “Mr. Haulman” or “AJH Pizza”) filed a Formal Complaint against Blue Pilot Energy, LLC (“BPE”), claiming that its electric account had been switched without consent. Complainant seeks a refund for the difference between the amount Complainant would have paid PPL Electric Utilities Corporation (“PPL”) and what was billed by BPE for the months of February and March 2014.<sup>1</sup>

BPE filed an Answer to the Complaint on April 29, 2014. An evidentiary hearing was held on December 15, 2015. By Interim Order dated December 30, 2016, Administrative Law Judge (“ALJ”) Buckley closed the evidentiary record and established a briefing schedule. This Reply Brief, which is filed pursuant to that Interim Order, incorporates by reference BPE’s Main Brief so as not to be unduly repetitive of the factual statements and legal arguments made therein.

## **II. SUMMARY OF ARGUMENT**

Complainant’s Main Brief suggests that “[t]he issue is whether Ashley Killinger had corporate authority to establish a contract for a variable rate between Complainant and BPE.”<sup>2</sup> As the Commission does not have jurisdiction to determine whether a person has corporate authority to enter into a contract, this issue may not be addressed in this proceeding. The only issue raised by the Complaint over which the Commission has jurisdiction is whether BPE complied with the Commission’s regulations in enrolling Complainant’s account.

As explained in BPE’s Main Brief, it followed the Commission’s regulations, performed a third party verification process, inquired as to Ms. Killinger’s authority to enroll the account and mailed a disclosure statement. The problem described by Complainant – of having its PPL account

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<sup>1</sup> [http://www.puc.state.pa.us/about\\_puc/consolidated\\_case\\_view.aspx?Docket=C-2014-2415273](http://www.puc.state.pa.us/about_puc/consolidated_case_view.aspx?Docket=C-2014-2415273)

<sup>2</sup> Complainant Main Brief at 6.

switched without its authorization – was not caused by BPE. Rather, Complainant brought these issues upon itself through inattentiveness to its PPL account, bills and correspondence. Therefore, the Complaint should be dismissed.

### III. ARGUMENT

Complainant characterizes the issue in this proceeding as involving a question of whether Ms. Killinger had corporate authority to switch Complainant’s electric account from PPL to BPE. As a creation of the General Assembly, the Commission has only the powers and authority granted to it by the General Assembly and contained in the Public Utility Code.<sup>3</sup> It is well-settled that the Commission must act within, and cannot exceed, its jurisdiction.<sup>4</sup> Jurisdiction may not be conferred by the parties where none exists.<sup>5</sup> Subject matter jurisdiction is a prerequisite to the exercise of power to decide a controversy.<sup>6</sup> Nothing in the Public Utility Code<sup>7</sup> confers jurisdiction on the Commission to determine whether an individual has corporate authority to enter into a contract with an electric generation supplier (“EGS”). To the extent that a person lacks such authority and takes action purportedly on behalf of the corporation, a legal dispute arises between the corporation and the individual that must be pursued in the courts.<sup>8</sup>

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<sup>3</sup> See *City of Phila. v. Phila. Elec. Co.*, 473 A.2d 997, 999-1000 (Pa. 1984) (“We begin our inquiry by recognizing that the authority of the Commission must arise from the express words of the pertinent statutes or by strong and necessary implication therefrom...It is axiomatic that the Commission’s power is statutory; and the legislative grant of power in any particular case must be clear.”); see also *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791, 795 (Pa. 1977); *Tod and Lisa Shedlosky v. Pennsylvania Electric Co.*, Docket No. C-20066937 (Order entered May 28, 2008).

<sup>4</sup> *City of Pittsburgh v. Pa. PUC*, 43 A.2d 348 (Pa. Super. 1945).

<sup>5</sup> *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967).

<sup>6</sup> *Hughes v. Pennsylvania State Police*, 619 A.2d 390 (Pa. Cmwlth. 1992), *alloc. denied*, 637 A.2d 293 (Pa. 1993).

<sup>7</sup> 66 Pa.C.S. §§ 101 *et seq.*

<sup>8</sup> See *Basile v. H&R Block, Inc.* 761 A.2d 1115, 563 Pa. 359 (2000). A significant factor in deciding whether agency relationships exist is the control of the individual over day-to-day operations. See, e.g., *Myszkowski v. Penn Stroud Hotel*, 430 Pa. Super. 315, 634 A.2d 622 (1993.).

The only issue raised in this proceeding over which the Commission has jurisdiction is whether BPE violated the Commission's regulations in enrolling Complainant's account for electric generation supply. As the moving party, Complainant has the burden of proving that BPE violated the Commission's regulations in switching its account. In order to satisfy this burden, Complainant must establish that BPE breached some duty owed to it in violating the Public Utility Code, or a regulation or order of the Commission.<sup>9</sup> Complainant has failed to carry this burden.

The evidence in the record shows that BPE: (i) inquired as to Ms. Killinger's authority to enroll the account; (ii) enrolled the account number with PPL that was provided by Ms. Killinger; (iii) mailed a disclosure statement to the address given by Ms. Killinger;<sup>10</sup> and (iv) using the account number provided by Ms. Killinger during the enrollment process, sent an EDI transaction to PPL to lawfully effectuate the switch.<sup>11</sup> The Commission's regulations do not require EGSs to obtain proof from the person enrolling the account that they are authorized to do so. Rather, the Commission has found that an EGS can refute a slamming allegation by producing a third-party verification recording that contains an indication that the person enrolling the account is authorized to make changes.<sup>12</sup> Also, PPL sent a confirmation letter to Complainant's address.<sup>13</sup> All of these facts demonstrate that no violations of the Commission regulations occurred.

Even if the Commission finds that BPE owed some further duty to Complainant, pursuant to Commission regulations that have not been identified by Complainant, Complainant did not

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<sup>9</sup> *Waldron v. Philadelphia Electric Company*, 54 Pa. PUC 98; 66 Pa.C.S. § 701.

<sup>10</sup> BPE Exhibits 1 and 1-A, 2 and 3; Tr. 56-60.

<sup>11</sup> PPL Electric Exhibit 3 (entry for November 21, 2012).

<sup>12</sup> *Tran v. Respond Power LLC*, Docket No. C-2014-2417540 (Order entered July 30, 2015), at 9.

<sup>13</sup> PPL Electric Exhibit 4; Tr. 27, 69.

timely raise a dispute about the enrollment. Since PPL sent the confirmation letter to Complainant's mailing address in November 2012 and Complainant reassumed control of the PPL account (containing BPE charges) in October 2013, Complainant had ample opportunity to dispute or cancel the switch prior to receiving the February 2014 bill. Yet, Complainant did not contact BPE until March 26, 2014<sup>14</sup> and did not file the Complaint with the Commission until April 2, 2014. Notably, the slamming regulations require a customer to register a dispute within two billing periods in order to be relieved of responsibility for the EGS charges.<sup>15</sup> The rationale for the two billing periods is that a customer should reasonably have known that EGS charges were on the bill within that timeframe.<sup>16</sup>

The problem described by Complainant – of having its PPL account switched without its authorization – was not caused by BPE. Rather, Complainant brought these issues upon itself through inattentiveness to its PPL account, bills and correspondence. The alleged unauthorized switch occurred because Complainant did not require the purchasers of its business assets to secure their own PPL account number for the facility, close the pre-existing account or even notify PPL of the sale.<sup>17</sup> Through these actions, Complainant effectively allowed the purchasers to assume control over the PPL account, which included changing the mailing address with PPL and paying the bills over the course of a year.<sup>18</sup>

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<sup>14</sup> Tr. 60, 62.

<sup>15</sup> 52 Pa. Code § 57.177.

<sup>16</sup> *Id.* See also *Gruelle c/o Toll Diversified Properties, Inc. v. PPL Electric Utilities Corporation and Blue Pilot Energy, LLC*, Docket No. C-2015-2463573 (Initial Decision served November 18, 2015; Final Order entered November 22, 2015) (a business owner's inattentiveness cannot be attributed to the EGS as a violation of any Commission order, regulation or statute), at 12.

<sup>17</sup> Complainant's Exhibit D; Tr. 32, 45, 48.

<sup>18</sup> PPL Electric Exhibits 3 and 9; Tr. 25, 28-33, 41-46, 71.

BPE would have had no way of knowing that the account number provided by Ms. Killinger in November 2012 had previously belonged to AJH Pizza or even that AJH Pizza existed.<sup>19</sup> BPE's interactions with Ms. Killinger appropriately centered on AI's Pizza & Subs – the entity that was seeking to enroll with BPE.<sup>20</sup> Notably, while Complainant argues in its Main Brief that Ms. Killinger had no authority to switch the account, Complainant did not raise any issues during the year when Ms. Killinger paid the bills associated with the account.

Complainant also ignored the confirmation letter that PPL sent to the 409 North Enola Road address before the change in the billing address was made by the purchasers. Complainant further aggravated the situation by failing to review PPL bills for several months after it reacquired the business due to the purchasers' default on the purchase agreement in October 2013. Rather, Complainant merely took over paying the PPL bills, which prominently showed BPE's charges as the EGS, and did not dispute BPE's status as the EGS until April 2, 2014, more than five months later. Had Complainant reviewed the PPL bill upon resuming operation of the business in October 2013, a switch could have been implemented prior to February 2014.<sup>21</sup>

In all aspects of the enrollment, BPE fully complied with the Commission's regulations, which do not require EGSs to obtain proof from the person enrolling the account that they are authorized to do so. By asking Ms. Killinger to indicate whether she had authority to make the switch and by mailing the disclosure statement, BPE fulfilled its regulatory obligations. BPE was

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<sup>19</sup> Tr. 62.

<sup>20</sup> BPE Exhibits 1 and 1-A.

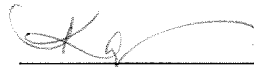
<sup>21</sup> At that time, switches took up to 45 days. *See Rulemaking to Amend the Provisions of 52 Pa. Code, Chapter 57 Regulations Regarding Standards for Changing a Customer's Electricity Generation Supplier*, Docket No. L-2014-2409383 (Final-Omitted Rulemaking Order adopted April 3, 2014).

not required by the Commission's regulations to further inquire as to her authority or to obtain a written signature on the contract.<sup>22</sup> Therefore, the Complaint should be dismissed.

### III. CONCLUSION

Based on the foregoing, Blue Pilot Energy, LLC respectfully requests that the Complaint be dismissed.

Respectfully submitted,



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Dated: February 3, 2017

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<sup>22</sup> See Brief at pp. 5-6.